

THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204

STATE OF INDIANA)
)
COUNTY OF MARION)

ERIC A. WASHINGTON, III,
Complainant,

DOCKET NO. EMra80081150
EEOC NO 053802215

vs.

ST MARGARET HOSPITAL,
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Comes now Robert D. Lange, Hearing Officer for the Indiana Civil Rights Commission ("ICRC"), and enters his Recommended Findings of Fact, Conclusions of Law and Order (hereinafter "the recommended decision"), which recommended decision is in words and figures as follows:

(H.I.)

And comes not any party filing objections to said recommended decision within the ten (10) day period prescribed by IC 4-22-1-12 and 910 IAC 1-12-1(B).

And comes now ICRC, having considered the above and being duly advised in the premises and adopts ad its Final Order the Findings of Fact, Conclusions of Law and Order recommended by the Hearing Officer, a copy of which is attached hereto and incorporated by reference herein.

Dated: March 19, 1982

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ERIC A. WASHINGTON, III,
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vs.

ST MARGARET HOSPITAL,
Respondent.

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The undersigned Hearing Officer, *sua sponte*, by Order dated December 8, 1981, raised the question of whether the Indiana Civil Rights Commission ("ICRC") lacks subject matter jurisdiction for either or both of the following reasons: (a) the purported complaint is not signed and verified before a notary public or other person duly authorized by law to administer oaths and take acknowledgements as required by IC 22-9-1-3(o) and/or (b) the purported complaint is not an original document and/or does not bear an original signature of Complainant, Eric A. Washington, III ("Washington").

Procedures to resolve the factual and legal questions relating to those issues was set out in that Order. Those procedures, summarized, were: (a) Counsel for Washington and counsel for Respondent St. Margaret Hospital ("the Hospital") were to confer and consider upon what facts they could agree and file any Stipulations of Fact on or before January 8, 1982; (b) Either party who desired a hearing on any factual question pertaining to these issues was to file a motion for a hearing on or before January 8, 1982; (c) the Hearing Officer stated that he would recommend that hearing, on January 29, 1982; (d) The parties were advised that if neither moved for hearing, both would be deemed to have waived the right to a hearing on any factual question

relating to those issues and to have agreed that all questions of fact may be resolved on the basis of any Stipulations of Fact which may have been filed and any other matters of record, with any question of fact undressed thereby to be resolved against the party bearing the burden of proof; and (e) the Hearing Officer ordered that each party may file one (1) brief only and may file that only if it were received at ICRC no later than 3:15pm, Indianapolis time, on January 29, 1981 (*sic*, 1982).

On January 8, 1982, the parties, each by counsel, filed their Stipulations of Fact. Also on that day, Washington, by counsel filed his Motion for Hearing.

On January 28, 1982, Washington, by counsel, filed his Motion to Cancel (*sic*, Cancel) Hearing which Motion was granted by Order of the same date.

On January 28, 1982, the Hospital, by counsel, filed Respondent's Brief on Jurisdiction. On January 29, 1982, Washington, by counsel, prior to 3:15pm, filed Complainant's Brief Regarding ICRC Subject Matter Jurisdiction.

Having considered the above, and being duly advised in the premises, the Hearing Officer now recommends that ICRC enter the following Findings of fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Washington's charge with ICRC bearing the above docket number was filed with ICRC on or about August 22, 1980. In essence, Washington claims that the Hospital committed unlawful discrimination based on race when it terminated him from his position as an orthopedic technician on or about June 13, 1980.

2. An upside down “Received” stamp of the Indianapolis District Office of the United States Equal Employment Opportunity Commission (“EEOC”). Otherwise, that portion of the charge appears substantially as follows:

x I also want this charged filed with the EEOC.

I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures,

I declare under penalty of perjury that the foregoing is true and correct.

s/Eric A. Washington, III

DATE: s/8/18/80

Charging Party (signature)

3. The lower right-hand portion of the charge bears the remainder of the aforementioned “received” stamp, but is otherwise blank, and appears substantially as follows:

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Day, month, and year)

NOTARY, (when necessary to meet State and Local Requirements)

4. Any Conclusion of Law which should have been deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. ICRC is an “agency” as that term is used in the Administrative Adjudication Act (“AAA”), IC 4-22-1-1, *et. seq.* IC 22-9-1-4(b).
2. Section 5 of the AAA requires that “[t]he final order or determination of any issue or case applicable to a particular person shall not be made except upon hearing...”. IC 4-22-1-5.
3. Washington and the Hospital are both “persons” as that term is used in the AAA and the Indiana Civil Rights Law. IC 4-22-1-2, IC 22-9-1-3(a), cf. 910 IAC 1-1-1(A).
4. The Indiana Civil Rights Law denies ICRC the authority to “...hold hearings in the absence of a complaint...”. IC 22-9-1-6(e).
5. The requirement that “[t]he original shall be signed and verified before a notary public or other person duly authorized by law to administer oaths and take acknowledgements...”. IC 22-9-1-3(o), is an element of the Indiana Civil Rights Law’s definition of the term “complaint” as used in the various sections of the chapter (IC 22-9-1).
6. Washington’s charge was not verified before either a notary public or before another person duly authorized by law to administer oaths and take acknowledgements. His arguments to the contrary, discussed below, are unpersuasive:
 - a. The provisions of Ind. R. Tr. P. 11(B) (hereinafter cited as “TR. ____”) do not serve two cause Washington’s charge t meet the requirements of IC 22-9-1-3(o) for two reasons: (1) Though TR. 11(B) does appear to authorize, in effect, individuals to verify their own complaints and thus administer oaths, it does not make those individuals “...duly authorized by law to take acknowledgements...” as is required by IC 22-9-1-3(o). “An acknowledgment in its technical legal sense is a

formal declaration before a proper officer that an instrument is the act or deed of the person executing it. It is to be distinguished from a jurat, verification of attestation" I C.J.S. Acknowledgements §1 at Page 777. (2) The trial rules are not applicable before administrative agencies. TR. 1, *Solar Sources, Inc. v. Air Pollution Control Board* ____ Ind. App. ____, 409 N.E.2d 1136 (1980), *Clary v. National Friction Products, Inc.* 259 Ind. 581, 290 N.E.2d 53 (1972), *State v. Briedenhager* 257 Ind. 699, 279 N.E. 794 (1972).

7. Because Washington's charge is not a "complaint" as that term is defined in IC 22-9-1-3(o), ICRC may not hold a hearing on this matter, IC 22-9-1-6(e).
8. Because ICRC cannot hold a hearing, it may make no order or determination. IC 22-9-1-6(e).
8. Because ICRC cannot hold a hearing, it may make no order or determination. IC 4-22-1-5.
9. Subject matter jurisdiction is, by definition, the power to adjudicate relative to the subject matter involved. *Town of Eaton v. Ricker* 251 Ind. 219, 240 N.E.2d 821 (1969). Since ICRC has been denied that power absent a "complaint", lack subject matter jurisdiction in the circumstances here.
10. Any Finding of Fact which should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

1. Washington's charge should be, and the same hereby is, dismissed.

Dated: February 16, 1982